

Act Concerning Supplemental Provisions on Appeals in Environmental Matters Pursuant to EC Directive 2003/35/EC (Environmental Appeals Act)^{*)}

**of 7 December 2006 (Federal Law Gazette I p. 2816),
amended by Article 17 of the Act of 29 July 2009 (Federal Law Gazette I p. 2542),
and amended by Article 15 of the Act of 31 July 2009 (Federal Law Gazette I p. 2585)**

Article 1

Scope

(1) This Act shall apply to appeals against:

1. Decisions as defined in Article 2 paragraph (3) of the Federal Environmental Impact Assessment Act (Federal EIA Act) [Gesetz über die Umweltverträglichkeitsprüfung] concerning the admissibility of projects for which there may be an obligation to conduct an environmental impact assessment pursuant to:
 - a) The Federal EIA Act
 - b) The Ordinance on the Assessment of Environmental Impacts of Mining Projects [Verordnung über die Umweltverträglichkeitsprüfung bergbaulicher Vorhaben] or
 - c) Statutory provisions of the German states [*Länder*].
2. Permits for installations requiring a permit according to Column 1 of the Annex to the Ordinance on Installations Requiring a Permit [Verordnung über genehmigungsbedürftige Anlagen], decisions pursuant to Article 17 paragraph (1a) of the Federal Immission Control Act [Bundes-Immissionsschutzgesetz], against licences pursuant to Article 8 paragraph (1) of the Federal Water Act [Wasserhaushaltsgesetz] for uses of bodies of water that are linked with a project within the meaning of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and

^{*)} This Act transposes Article 3 number 7 and Article 4 number 4 of Directive 2003/35/EC of the European Parliament and the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 85/337/EEC and 96/61/EC (OJ EU No. L 156 p. 17).

control (Official Journal, EU L 24 of 29 January 2008, p. 8), and against planning approval notices [Planfeststellungsbeschlüsse] for landfills pursuant to Article 31 paragraph (2) of the Closed Substance Cycle and Waste Management Act [Kreislaufwirtschaft- und Abfallgesetz].

This Act shall also apply if, contrary to applicable statutory provisions, no decision has been taken pursuant to the first sentence. Article 15 paragraph (5) and Article 16 paragraph (3) of the Environmental Impact Assessment Act and Article 44a of the Rules of Procedure of the Administrative Courts [Verwaltungsgerichtsordnung] shall remain unaffected. The first and second sentence shall not apply if a decision within the meaning of this paragraph was issued on the basis of a decision in litigious proceedings before an Administrative Court.

- (2) This Act shall also apply in the area of the exclusive economic zone or the continental shelf within the framework of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette [BGBl.] 1994 II p. 1799, 1995 II p. 602).

Article 2 **Appeals by associations**

- (1) A German or foreign association that is recognized pursuant to Article 3 may, without having to assert that its own rights have been violated, file appeals in accordance with the Rules of Procedure of the Administrative Courts against a decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision if the association:
1. Asserts that a decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision violates statutory provisions that protect the environment, establish individual rights, and could be of importance for the decision;
 2. Asserts that promotion of the objectives of environmental protection in accordance with its field of activity as defined in its bylaws is affected by the decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision; and
 3. Was entitled to participate in a procedure under Article 1 paragraph (1) and expressed itself in that matter according to the applicable statutory provisions or, contrary to the applicable statutory provisions, was not given an opportunity to express itself.

(2) An association that is not recognized pursuant to Article 3 may file an appeal pursuant to paragraph (1) only if:

1. It fulfils the requirements for recognition at the time the appeal is filed;
2. It has applied for recognition; and
3. A decision regarding recognition has not yet been made for reasons for which the association is not responsible.

The requirements of number 3 are considered to have been fulfilled by a foreign association. The appeal is no longer admissible when a decision denying recognition becomes final.

(3) If the association had an opportunity to express itself in the procedure in accordance with Article 1 paragraph (1), it shall be precluded during the appeal procedure from making any objections that it did not make, or did not make in a timely fashion according to the applicable statutory provisions, during the procedure in accordance with Article 1 paragraph (1), but that it could have made.

(4) If a decision pursuant to the first sentence of Article 1 paragraph (1) has not been publicly announced or notified to the association in accordance with applicable statutory provisions, an opposition must be lodged or an action brought within one year after the association becomes aware, or could have become aware, of the decision. The first sentence shall apply mutatis mutandis if a decision pursuant to Article 1 paragraph (1), first sentence, contrary to the applicable statutory provisions, was not taken and the association becomes aware, or could have become aware, of that circumstance. The first sentence of Article 47 paragraph (2) of the Rules of Procedure of the Administrative Courts shall apply to land-use plans.

(5) Appeals in accordance with paragraph (1) shall be justified:

1. If the decision pursuant to Article 1 paragraph (1), or the failure to take such a decision, violates statutory provisions that protect the environment, establish individual rights, and are of importance for the decision, and the violation involves issues of environmental protection that are among the objectives that are to be promoted by the association according to its bylaws;

2. In reference to land-use plans, if the determinations of the land-use plan that establish the admissibility of a project subject to an environmental impact assessment violate statutory provisions that protect the environment and establish individual rights, and the violation involves issues of environmental protection that are among the objectives that are to be promoted by the association according to its bylaws.

In the case of decisions pursuant to Article 1 paragraph (1) number 1, there must also be an obligation to conduct an environmental impact assessment.

Article 3

Recognition of associations

- (1) Upon request, a German or foreign association shall be recognized for the purpose of filing appeals pursuant to this Act. The association shall be recognized if:
 1. According to its bylaws, it predominantly, and not just temporarily, encourages the objectives of environmental protection;
 2. It has existed for at least three years at the time of recognition and has been active as defined in number 1 during that period;
 3. It offers guarantees of proper performance of its duties; the type and scope of its previous activity, its membership, and the effectiveness of the association must be taken into account in that regard;
 4. It promotes public-benefit purposes as defined in Article 52 of the German Tax Code [Abgabenordnung]; and
 5. It allows any person who supports the objectives of the association to become a member; members are persons who are given full voting rights in the general meeting of the association upon joining; if at least three quarters of its members are legal persons the association may be exempted from the requirement in the first half of this sentence, provided the majority of such legal persons fulfil this requirement.

The field of activities in accordance with the bylaws to which the recognition applies must be referred to in the recognition; in particular, it shall be stated whether the association has a main emphasis on encouraging the objectives of nature conservation and landscape preservation. The recognition can be linked, also retroactively, with the obligation to notify amendments to the bylaws. It can also be publicly announced. In cases pursuant to paragraph (3), the recognition of an association that has a main emphasis on encouraging the objectives of nature conservation and landscape preservation shall further state whether this association is active state-wide according to its bylaws.

(2) For a foreign association or an association with an area of activity exceeding the territory of one German state (*Land*), recognition shall be pronounced by the Federal Environment Agency [Umweltbundesamt]. For an association pursuant to the first sentence, which has a main emphasis on encouraging the objectives of nature conservation and landscape preservation, this recognition shall be issued in agreement with the Federal Agency for Nature Conservation [Bundesamt für Naturschutz].

(3) For a domestic association with an area of activity not exceeding the territory of one German state (*Land*), recognition shall be pronounced by the competent authority of this state.

Article 4

Errors in following procedural requirements

(1) The reversal of a decision on the admissibility of a project pursuant to Article 1 paragraph (1), first sentence, number 1 can be requested if

1. An environmental impact assessment, or
2. A preliminary assessment of the individual case concerning the requirement for an environmental impact assessment

required in accordance with the Environmental Impact Assessment Act, the Ordinance on the Assessment of the Environmental Impacts of Mining Projects, or the corresponding statutory provisions of the *Länder* was not carried out, and was not carried out at a later stage. Article 45 paragraph (2) of the Administrative Procedures Act [Verwaltungsverfahrensgesetz] and other corresponding statutory provisions shall remain

unaffected; the possibility of suspending court proceedings to remedy a procedural error shall remain unaffected.

- (2) If the subject of the court review is decisions as defined in Article 2 paragraph (3) number 3 of the Environmental Impact Assessment Act, Articles 214 and 215 and the related transitional provisions of the Federal Building Code [Baugesetzbuch] and the relevant statutory provisions of the *Länder* shall apply, notwithstanding paragraph (1).
- (3) Paragraph (1) and (2) shall apply mutatis mutandis to appeals by participants pursuant to Article 61 number 1 and 2 of the Rules of Procedure of the Administrative Courts.

Article 5

Transitional provision

(1) This Act shall apply to procedures pursuant to Article 1 paragraph (1), first sentence, that were initiated, or would have had to be initiated, after 25 June 2005; the first half of this sentence shall not apply to decisions pursuant to Article 1 paragraph (1), first sentence, which became final before 15 December 2006.

(2) Recognitions pursuant to Article 3 of this Act in the version of 28 February 2010, pursuant to Article 59 of the Federal Nature Conservation Act [Bundesnaturschutzgesetz] in the version of 28 February 2010 or pursuant to statutory provisions of the German states (*Länder*) in the framework of Article 60 of the Federal Nature Conservation Act in the version of 28 February 2010 which have been issued before 28 February 2010, as well as recognitions by the Federation and by the German states (*Länder*) pursuant to Article 29 of the Federal Nature Conservation Act in the version valid until 3 April 2002 shall continue to be in force as recognitions within the meaning of this Act.

(3) Recognition procedures that have already been initiated on the basis of this Act shall be concluded by the Federal Environment Agency pursuant to the statutory provisions applicable until 1 March 2010.

Article 6

Entry into force

This Act shall enter into force on the day after its promulgation.